

Maine Revised Statutes
Title 38: WATERS AND NAVIGATION
Chapter 3: PROTECTION AND IMPROVEMENT OF WATERS

§569-B. GROUND WATER OIL CLEAN-UP FUND

(WHOLE SECTION TEXT EFFECTIVE 12/31/15)

The Ground Water Oil Clean-up Fund is established to be used by the department as a nonlapsing, revolving fund for carrying out the purposes of this subchapter. To this fund are credited all registration fees, fees for late payment or failure to register, penalties, transfer fees, reimbursements and other fees and charges related to this subchapter. To this fund are charged any and all expenses of the department related to this subchapter, including administrative expenses, payment of 3rd-party damages covered by this subchapter, costs of removal of discharges of oil and costs of cleanup of discharges from aboveground and underground storage facilities, including, but not limited to, restoration of water supplies and any obligations of the State pursuant to Title 10, section 1024, subsection 1. [1995, c. 399, §16 (AMD); 1995, c. 399, §21 (AFF).]

Money in the fund not needed currently to meet the obligations of the department in the exercise of its responsibilities under this subchapter and not on loan to the Maine Coastal and Inland Surface Oil Clean-up Fund must be deposited with the Treasurer of State to the credit of the fund and may be invested as provided by law. Interest received on that investment must be credited to the fund. [1991, c. 817, §26 (NEW).]

1. Research and development. The Legislature may allocate not more than \$100,000 per year of the amount then currently in the fund to be devoted to research and development in the causes, effects and removal of pollution caused by oil, petroleum products and their by-products on ground waters of the State. These allocations must be made in accordance with section 570-A.

[1991, c. 817, §26 (NEW) .]

2. Third-party damages. Any person claiming to have suffered actual damages to real estate or personal property or loss of income directly or indirectly as a result of a discharge of oil to ground water prohibited by section 543, in this subsection called the "claimant," may apply to the commissioner within 6 months after the occurrence or discovery of the discharge stating the amount of damage alleged to have been suffered as a result of that discharge. The commissioner shall prescribe appropriate forms and details for the applications. The board, upon petition and for good cause shown, may waive the 6-month limitation for filing damage claims.

A. If the claimant and the commissioner are able to agree as to the amount of the damage claim, the commissioner shall certify the amount of the claim and the name of the claimant to the Treasurer of State and the Treasurer of State shall pay the amount of the claim from the Ground Water Oil Clean-up Fund. [1991, c. 817, §26 (NEW).]

B. If the claimant and the commissioner are not able to agree as to the amount of the damage claim, the commissioner shall forthwith transmit the claim for action to the department as provided in this subchapter. [1991, c. 817, §26 (NEW).]

C. A claimant shall take all reasonable measures to minimize damages suffered by the claimant as a result of a discharge of oil. [1991, c. 817, §26 (NEW).]

D. Third-party damage claims must be stated in their entirety in one application. Damages omitted from any claim at the time the award is made are deemed waived. [1991, c. 817, §26 (NEW).]

E. Damage claims arising under this subchapter are recoverable only in the manner provided under this subchapter. It is the intent of the Legislature that the remedies provided for such damage claims in this subchapter are exclusive. [1991, c. 817, §26 (NEW).]

F. Awards from the fund on damage claims may not include any amount that the claimant has recovered on account of the same damage by way of settlement with or judgment of a court of competent jurisdiction against the person causing or otherwise responsible for the discharge. [1991, c. 817, §26 (NEW).]

G. A 3rd-party damage claim for damages to real estate may not include the devaluation of the real estate associated with the loss of a water supply if the commissioner finds under section 568, subsection 2 that a public or private water supply is available and best meets the criteria of that subsection and the property owner did not agree to be served by that public or private water supply. If a water supply well is installed after October 1, 1994 to serve a location that immediately before the well installation was served by a viable community public water system, and the well is or becomes contaminated with oil:

(1) A 3rd party may not recover damages under this subchapter for expenses incurred in treating or replacing the well if the well is installed in an area delineated as contaminated as provided in section 548, subsection 1; and

(2) A 3rd-party damage claim under this subchapter with regard to treatment or replacement of the well is limited to reimbursement of the expense of installing the well and its proper abandonment if the well is installed in any other area.

For purposes of this paragraph, "viable community public water system" has the same meaning as in section 548. [1993, c. 621, §5 (NEW).]

[1993, c. 621, §5 (AMD) .]

3. Determination of disputed 3rd-party damage claims. The commissioner shall establish a claims processing capability within the department to hear and determine claims filed under this subchapter that are not agreed upon by the claimant and the commissioner.

A. An independent hearing examiner appointed by the commissioner shall hear and determine any disputed 3rd-party damage claims. [1991, c. 817, §26 (NEW).]

B. To the extent practical, all claims arising from or related to a common discharge must be heard and determined by the same hearing examiner. [1991, c. 817, §26 (NEW).]

C. Hearings before the hearing examiner are informal and the rules of evidence prevailing on judicial proceedings are not binding. The hearing examiner may administer oaths and require by subpoena the attendance and testimony of witnesses and the production of books, records and other evidence relative or pertinent to the issues presented to the hearing examiner for determination. [1991, c. 817, §26 (NEW).]

D. Determinations made by the hearing examiner are final and those determinations may be subject to review by a Justice of the Superior Court, but only as to matters related to abuse of discretion by the hearing examiner. A claimant seeking review of a hearing examiner determination shall file an appeal in the Superior Court within 30 days of the determination. [1991, c. 817, §26 (NEW).]

E. The commissioner shall certify the amount of the damage award, if any, after determination by the hearing examiner and shall certify the name of the claimant to the Treasurer of State, unless the commissioner has determined that the claimant is a responsible party, in which case the commissioner shall withhold certification until all claims that the commissioner has against the responsible party with respect to the discharge have been satisfied. [1991, c. 817, §26 (NEW).]

[1991, c. 817, §26 (NEW) .]

4. Funding. A fee of 3¢ per barrel of gasoline and 2¢ per barrel of refined petroleum products and their by-products other than gasoline and liquid asphalt, including #6 fuel oil, #2 fuel oil, kerosene, jet fuel and diesel fuel, is assessed on the transfer of those products by oil terminal facility licensees, as defined in section 542, subsection 7. These fees must be paid monthly by the oil terminal facility licensees on the basis of records certified to the commissioner and credited to the Ground Water Oil Clean-up Fund upon receipt by the department.

A. [1997, c. 374, §8 (RP).]

B. [1997, c. 374, §8 (RP).]

If the fund balance is reduced to \$3,000,000 or less, the Fund Insurance Review Board may adopt rules increasing the fees imposed under this subsection by up to 10¢ per barrel for gasoline and up to 5¢ per barrel for other petroleum products, except liquid asphalt and #6 fuel oil, as necessary to avoid a shortfall in the fund. The board may use the emergency rule-making procedures under Title 5, section 8054 to ensure that the fee increase is instituted in time to avoid a shortfall. Any fee increase adopted pursuant to board rules terminates and the original fees imposed by this subsection apply when the fund balance reaches \$5,000,000.

[1997, c. 374, §8 (AMD) .]

4-A. Penalty for late payment of fees. Fees assessed under subsection 4 are due to the department on or before the last day of the month immediately following the month in which the oil was transferred. Licensees who fail to pay the fee by that date shall pay an additional amount equal to 10% of the amount assessed under subsection 4.

[1999, c. 334, §5 (NEW) .]

5. Disbursements from fund. Money in the Ground Water Oil Clean-up Fund must be disbursed for the following purposes and no others:

A. Administrative expenses, personnel expenses and equipment costs of the department related to the enforcement of this subchapter and any loans to the Maine Coastal and Inland Surface Oil Clean-up Fund made pursuant to this section; [1991, c. 817, §26 (NEW).]

B. All costs involved in the removal of a prohibited discharge, the abatement of pollution and the implementation of remedial measures, including restoration of water supplies, related to the discharge of oil, petroleum products and their by-products from an oil storage facility; [2009, c. 501, §12 (AMD) .]

C. Sums allocated to research and development in accordance with this section, except that money may not be disbursed for this purpose when the fund balance is \$3,000,000 or less; [1995, c. 399, §19 (AMD); 1995, c. 399, §21 (AFF).]

D. Payment of the 3rd-party damage claims awarded in accordance with this section; [1991, c. 817, §26 (NEW).]

E. Payment of costs of arbitration and arbitrators; [1991, c. 817, §26 (NEW).]

F. Payment of costs of insurance by the State to extend or implement the benefits of the fund; [1991, c. 817, §26 (NEW).]

G. Sums up to \$50,000 each year, which have been allocated by the Legislature on a contingency basis in accordance with section 570-A for payment of costs for studies of the environmental impacts of discharges to ground water prohibited by section 543 that may have adverse economic effects and that occur subsequent to the allocation, when the studies are considered necessary by the commissioner; and [1991, c. 817, §26 (NEW).]

H. All costs associated with the Board of Underground Oil Storage Tank Installers. [1991, c. 817, §26 (NEW).]

[2009, c. 501, §12 (AMD) .]

6. Reimbursements to fund. The commissioner shall seek recovery for the use of the fund of all sums expended from the fund, including overdrafts, for the purposes described in subsection 5, paragraphs B, D, E and G, or for other damage incurred by the State, in connection with a prohibited discharge, including interest computed at 15% a year from the date of expenditure, unless the commissioner finds the amount involved too small or the likelihood of success too uncertain. Requests for reimbursement to the fund if not paid within 30 days of demand must be turned over to the Attorney General for collection.

[1991, c. 817, §26 (NEW) .]

6-A. Lien. All costs incurred by the State in the removal, abatement and remediation of a prohibited discharge of oil from an aboveground or underground storage facility and all costs incurred by the State in the abandonment of any underground oil storage facility or tank under section 566-A, subsection 4 are a lien against the real estate of the responsible party.

A certificate of lien signed by the commissioner must be sent by certified mail to the responsible party prior to being recorded and may be filed in the office of the clerk of the municipality in which the real estate is located. The lien is effective when the certificate is recorded with the registry of deeds for the county in which the real estate is located. The certificate of lien must include a description of the real estate, the amount of the lien and the name of the owner as grantor.

When the amount for which a lien has been recorded under this subsection has been paid or reduced, the commissioner, upon request by any person of record holding interest in the real estate that is the subject of the lien, shall issue a certificate discharging or partially discharging the lien. The certificate must be recorded in the registry in which the lien was recorded. Any action of foreclosure of the lien must be brought by the Attorney General in the name of the State in the Superior Court for the judicial district in which the real estate subject to the lien is located.

[1999, c. 334, §6 (AMD) .]

7. Waiver of reimbursement. Upon petition of any responsible party, the board may, after hearing, waive the right to reimbursement to the fund if it finds that the occurrence was the result of any of the following:

- A. An act of war; [1991, c. 817, §26 (NEW) .]
- B. An act of government, either state, federal or municipal, except insofar as the act was pursuant to section 568; or [1991, c. 817, §26 (NEW) .]
- C. An act of God, which means an unforeseeable act exclusively occasioned by the violence of nature without the interference of any human agency. [1991, c. 817, §26 (NEW) .]

Upon such a finding by the board, immediate credit must be entered for the party involved. The findings of the board are conclusive, as it is the legislative intent that the waiver provided in this subsection is a privilege conferred, not a right granted.

[1991, c. 817, §26 (NEW) .]

8. Effective date. This section takes effect December 31, 2015.

[2009, c. 319, §15 (AMD) .]

SECTION HISTORY

1991, c. 817, §26 (NEW). 1993, c. 621, §5 (AMD). 1995, c. 399, §§16-19 (AMD). 1995, c. 399, §21 (AFF). 1997, c. 364, §35 (AMD). 1997, c. 374, §§8,9 (AMD). 1999, c. 334, §§5,6 (AMD). 2003, c. 245, §14 (AMD). 2009, c. 319, §15 (AMD). 2009, c. 501, §12 (AMD).

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